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Ineffectual Disaster Management in Puerto Rico: How the Human Rights-Based Approach Would Have Made a Difference

July 30, 2018

by Ingrid Nifosi-Sutton

Introduction

Eight months after Hurricane Maria, recovery efforts are still under way in Puerto Rico.¹ As more than 50,000 hurricane victims were still without power as of mid-April 2018,² shortcomings in the implementation of disaster management by competent authorities continue to be documented.³

This essay contributes to the important and necessary discussion on the situation in Puerto Rico in the aftermath of Hurricane Maria by assessing disaster recovery there through a human rights lens. It argues that implementation of the human rights-based approach (HRBA) to disaster management would have resulted in a more effective recovery strategy in so far as it would have tailored recovery efforts specifically to the needs and protections of disaster victims. For the purposes of this essay, an HRBA to disaster management is a conceptual and operational framework developed by committees of experts that monitor State compliance with UN human rights treaties, also known as human rights treaty bodies.⁴ After providing background information on the impact of Hurricane Maria on Puerto Rico, this essay introduces the HRBA to disaster management and emphasizes, in particular, its innovative reach. Lastly, this essay considers the excessive number of deaths that occurred in the months following Maria to show

¹ Nicole Acevedo and Istra Pacheco, *No Deeds, No Aid to Rebuild Homes: Puerto Rico's Reconstruction Challenge*, nbcnews (May 8, 2018) (available at <https://www.nbcnews.com/storyline/puerto-rico-crisis/no-deeds-no-aid-rebuild-homes-puerto-rico-s-reconstruction-n868396>, accessed on May 9, 2018).

² Danny Vinik, *FEMA's Plan Underestimated Puerto Rican Hurricane*, Politico (Apr. 15, 2018) (available at <https://www.politico.com/story/2018/04/15/puerto-rico-hurricane-fema-disaster-523033>, accessed on May 3, 2018).

³ *Id.* See also: Danica Coto, *US Questions Why Power not Fully Restored in Puerto Rico*, The Washington Post (May 8, 2018) (available at https://www.washingtonpost.com/world/the_americas/us-questions-why-power-not-fully-restored-in-puerto-rico/2018/05/08/ff11624c-52e0-11e8-a6d4-cal1d035642ce_story.html?utm_term=.40bd4363f5be, accessed on May 9, 2018); Arelis R. Hernández, *Sluggish Recovery from Hurricane Maria Reignites Calls for Puerto Rico's Statehood, Independence*, The Washington Post (Apr. 28, 2018) (available at https://www.washingtonpost.com/national/the-struggle-to-recover-from-hurricane-maria-reignites-calls-for-puerto-ricos-statehood-independence/2018/04/28/e9284fe2-2c7d-11e8-8688-e053ba58f1e4_story.html?noredirect=on&utm_term=.0fec855da9d7, accessed on May 3, 2018); and Danny Vinik, *How Trump Favored Texas over Puerto Rico*, Politico (Mar. 29, 2018) (available at <https://www.politico.com/story/2018/03/27/donald-trump-fema-hurricane-maria-response-480557>, accessed on May 4, 2018).

⁴ Office of the UN High Commissioner for Human Rights, *Monitoring the Core International Human Rights Treaties*, (2018) (available at <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>, accessed on May 3, 2018).

how implementation of the HRBA to disaster management would have minimized loss of lives and made a difference to the inhabitants of Puerto Rico.

1. Hurricane Maria: Impact and Flaws in its Management

Hurricane Maria decimated Puerto Rico on September 20, 2017, a few weeks after Hurricane Harvey ravaged Texas and Hurricane Irma hit Florida,⁵ thereby making the end of summer 2017 uniquely challenging for the United States (U.S.) in terms of disaster management. Hurricane Maria, however, was “a different class of disaster than Hurricanes Irma and Harvey.”⁶ As Jeff Weber, a meteorologist at the National Center for Atmospheric Research put it, “[i]t was as if a 50- to 60-mile-wide tornado raged across Puerto Rico, like a buzz saw.”⁷ This being so, it is not surprising that the damage that Hurricane Maria caused had catastrophic dimensions. According to UN estimates, the number of houses that Maria destroyed ranges from 30,000 to 90,000,⁸ and it is well-known that Maria obliterated Puerto Rico’s electric grid, thereby halting local provision of potable water since equipment to make water available to households and other facilities cannot work without power.⁹

How did local and federal authorities respond to Hurricane Maria? How were their recovery efforts? While the U.S. reacted swiftly and with urgency to the damage Hurricanes Harvey and Irma caused in Texas and Florida, the U.S.’s relief to Puerto Rico in the aftermath of Hurricane Maria has fallen significantly short. The disaster assistance that local and federal authorities have provided to the inhabitants of Puerto Rico has not matched the magnitude of the destruction ensuing from the hurricane and lacked leadership at the highest levels of the federal

⁵ While this short essay exclusively deals with the management of Hurricane Maria in Puerto Rico, it should not be forgotten that Hurricane Irma struck the northern part of Puerto Rico on September 7, 2017 before making landfall in Florida on September 10, 2017. Hurricane Harvey, on the other hand, hit Texas on August 25, 2017.

⁶ Robinson Meyer, *What’s Happening With the Relief Effort in Puerto Rico?* The Atlantic (Oct. 4, 2017) (available at <https://www.theatlantic.com/science/archive/2017/10/what-happened-in-puerto-rico-a-timeline-of-hurricane-maria/541956/>, accessed on Apr. 24, 2018).

⁷ Brian Resnick, *Why Hurricane Maria is such a Nightmare for Puerto Rico*, Vox (Sep. 22, 2017) (available at <https://www.vox.com/science-and-health/2017/9/21/16345176/hurricane-maria-2017-puerto-rico-san-juan-meteorology-wind-rain-power>, accessed on Apr. 27, 2018).

⁸ Office of the UN High Commissioner for Human Rights, *Puerto Rico: Human Rights Concerns Mount in Absence of Adequate Emergency Response*, (Oct. 30, 2017) (available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22326&LangID=E>, accessed on Apr. 27, 2018).

⁹ Kurtis Lee and Milton Carrero Galarza, *Two Months after Hurricane Maria, Puerto Rico Struggles to Regain Electricity and Thousands Flee the Island*, Los Angeles Times (Nov. 19, 2017) (available at <http://www.latimes.com/nation/la-na-puerto-rico-electricity-20171118-story.html>, accessed on May 4 2018); Devika Krishna Kumar, *Power Crews Scramble to Puerto Rico after Maria Smashes its Grid*, Reuters (Sept. 21, 2017) (available at <https://www.reuters.com/article/us-storm-maria-puertorico-power/power-crews-scramble-to-puerto-rico-after-maria-smashes-its-grid-idUSKCN1BW2OF>, accessed on May 4, 2018); Mekela Panditharatne, *FEMA Says Most of Puerto Rico has Potable Water. That Can’t Be True*, The Washington Post (Dec. 21, 2017) (available at https://www.washingtonpost.com/outlook/fema-says-most-of-puerto-rico-has-potable-water-that-cant-be-true/2017/12/21/cf8d8ce0-e511-11e7-a65d-1ac0fd7f097e_story.html?utm_term=.fc1e74fe76ef, accessed on Apr. 25, 2018).

government.¹⁰ Moreover, said assistance was slow and has worsened the situation of hurricane affected persons.¹¹

One of the most glaring indicators of the ineffectual disaster management in Puerto Rico is the excessive number of deaths that occurred in the months following Hurricane Maria. Reports published in December 2017 have found that while 64 died as a result of the immediate impact of Maria, over 1,000 more deaths occurred in its aftermath owing largely to various medical conditions such as sepsis and respiratory problems.¹² Though several complex factors account for the unexpected and dramatic number of casualties, this essay focuses specifically on the lack of timely provision of health care due to discoordination between civilian and military health care providers involved in the Hurricane Maria recovery effort. It has been reported that military health officials deployed in Puerto Rico on the U.S. Navy Hospital Ship Comfort in order to support overwhelmed local clinics and hospitals between October 3 and mid-November 2017, saw fewer Hurricane Maria victims than those that they could have actually treated for three main reasons. First, local medical providers did not understand the protocol for the referral of patients to the military doctors as laid down by FEMA staff and local authorities once the Comfort arrived in Puerto Rico, thirteen days after Hurricane Maria struck.¹³ Second, in areas without working cell phones, land lines, and satellite phones it was impossible to refer patients to the military doctors.¹⁴ Third, federal authorities' failure to organize a well-coordinated military effort in Puerto Rico limited the military doctors' ability to work together with local medical providers in order to deliver timely medical care to hurricane victims.¹⁵

¹⁰ [10] See Vinik, *supra* notes 2 and 3; *supra* note 6; Jeremy Konyndyk, *Hurricane Maria Killed 64 Puerto Ricans. Another 1,000 Died Because the Disaster Response Was Inadequate*, The Washington Post (Dec. 18, 2017) (available at https://www.washingtonpost.com/news/monkey-cage/wp/2017/12/18/hurricane-maria-killed-64-puerto-ricans-another-1000-died-because-the-disaster-response-was-inadequate/?utm_term=.40ba58c3e232, accessed on Apr. 24, 2018); and Alice Thomas, *Meeting the Urgent Needs of Hurricane Maria Survivors in Puerto Rico*, Refugee International Field Report (Dec. 2017) (available at https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5a55010253450af99e85b5be/1515520286161/RI_Puerto+Rico_Advocacy+Report+2018+New1-8-18.pdf).

¹¹ *Id.*

¹² Frances Robles, Kenan Davis, Sheri Fink and Sarah Almukhtar, *Official Toll in Puerto Rico: 64. Actual Deaths May Be 1,052*, The New York Times (Dec. 9, 2017) (available at https://www.nytimes.com/interactive/2017/12/08/us/puerto-rico-hurricane-maria-death-toll.html?_r=0, accessed on Apr. 24, 2018); Konyndyk, *supra* note 10.

¹³ Leyla Santiago and Mallory Simon, *There's a Hospital Ship Waiting for Sick Puerto Ricans — but No One Knows How to Get on It*, CNN (Oct. 17, 2017) (available at <http://www.cnn.com/2017/10/16/health/puerto-rico-hospital-ship/index.html>, accessed on Apr. 24, 2018); and Sean Breslin, *As Health Crisis Looms in Puerto Rico, Navy Hospital Ship Sits Mostly Empty*, (Oct. 20, 2017) (available <https://weather.com/news/news/2017-10-18-puerto-rico-health-crisis-hurricane-maria-usns-comfort>, accessed on Apr. 25, 2018).

¹⁴ Frances Robles and Sheri Fink, *Amid Puerto Rico Disaster, Hospital Ship Admitted Just 6 Patients a Day*, The New York Times (Dec. 6, 2017) (available at <https://www.nytimes.com/2017/12/06/us/puerto-rico-hurricane-maria-hospital-ship.html>, accessed on Apr. 28, 2018).

¹⁵ Dan Lamothe, *Clinton Pressed Trump to Deploy Hospital Ship Comfort to Puerto Rico. Now it's Preparing to Go*, The Washington Post (Sept. 26, 2017) (available at https://www.washingtonpost.com/news/checkpoint/wp/2017/09/26/clinton-pressured-trump-to-deploy-hospital-ship-comfort-to-puerto-rico-now-its-on-the-way/?utm_term=.9c49f03b1b44, accessed on Apr. 27, 2018); and Craig Hooper, *It Took Comfort 39 Days to Get Pierside in Puerto Rico. That's a National-Security Problem*, Defense One (Nov. 6, 2017) (available at <https://www.defenseone.com/ideas/2017/11/hospital-ships-hurricane-maria/142319/>, accessed on Apr. 28, 2017).

The lack of timely provision of health care must also be read in light of reports suggesting that the contrast between the relief provided to disaster victims in Florida and Texas and the assistance delivered to those in Puerto Rico (including medical assistance) can be ascribed to the fact that Puerto Rico is an “unincorporated territory” rather than a State of the United States. As a result of this legal status, the people of Puerto Rico have statutory U.S. citizenship which does not entitle them to the same rights and legal protections of other U.S. citizens.¹⁶

2. The Human Rights-Based Approach to Disaster Management

The situation in Puerto Rico could have been different had the U.S. taken the human rights-based approach (HRBA) to disaster management there. The HRBA to disaster management has been developed by committees of international experts that monitor State compliance with UN human rights treaties, the so-called human rights treaty bodies.¹⁷ Implementing the HRBA in disaster and post-disaster settings means that measures to deal with a disaster and its consequences are designed and implemented for the very purpose of respecting, protecting, and fulfilling rights or dimensions of rights that, in the view of the treaty bodies, are most at stake during disasters. For example, the right to life, and the rights to food and adequate housing, which under UN human rights law are part of the normative content of the right to an adequate standard of living.¹⁸ The HRBA requires that the following pivotal human rights principles underpin disaster management: the principles of non-discrimination and equality; the principle whereby the protection and needs of those who are disproportionately affected by the harms of a disaster have to be addressed as a matter of priority; the rights of disaster victims to be informed about governmental disaster management strategies and to participate in their drafting and implementation; and disaster victims’ rights to access justice and reparations in cases where they have suffered rights violations as a result of disaster mismanagement.¹⁹ The HRBA supersedes a notion of disaster response meant as a mere logistical effort to alleviate the sufferings of needy disaster-affected persons to replace it with a notion of disaster management that revolves around

¹⁶ Vinik, *supra* note 3; *supra* note 8; Nick Cumming-Bruce and Frances Robles, *U.S. Response to Storm-Hit Puerto Rico is Criticized by U.N. Experts*, The New York Times (Oct. 30, 2017) (available at <https://www.nytimes.com/2017/10/30/us/puerto-rico-whitefish-fbi-power.html>, accessed on Apr. 28, 2018); *Puerto Rico is Still in the Dark*, The Washington Post (Nov. 17, 2017) (available at https://www.washingtonpost.com/opinions/puerto-rico-is-still-in-the-dark/2017/11/17/7b516f94-c981-11e7-8321-481fd63f174d_story.html?utm_term=.511b72d78ec6, accessed on Apr. 29, 2018).

¹⁷ See for instance: Human Rights Committee, *Concluding Observations on the Initial Report Haiti*, CCPR/C/HTI/CO/1, para. 18 (Nov. 2014); Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Fourth, Fifth and Sixth Periodic Reports of the USA*, CERD/C/USA/CO/6, para. 31 (May 2008); Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Nepal*, CRPD/C/NPL/CO/1, para. 20 (March 2018); and Committee on the Elimination of Discrimination against Women, *General Recommendation No. 37 on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change*, CEDAW/C/GC/37 (Feb. 2018).

¹⁸ Committee on Economic Social and Cultural Rights, *General Comment No. 4, The Right to Adequate Housing* (Sixth Session 1991) E/1992/23; and *General Comment No. 12, The Right to Adequate food* (Twentieth Session 1999) E/C.12/1999/5.

¹⁹ *Supra* note 17. For analysis of the HRBA to disaster management see also: Walter Kalin, *A Human Rights-Based Approach to Building Resilience to Natural Disasters* (June 2011) (available at <https://www.brookings.edu/research/a-human-rights-based-approach-to-building-resilience-to-natural-disasters/>); and Ingrid Nifosi-Sutton, *A Human Rights-Based Vulnerability Paradigm: Lessons from the Case of Displaced Women in Post-Quake Haiti*, in *Routledge Handbook of Human Rights and Disasters*, Chapter 18 (Sommaro E. et Al. (eds.) (Mar. 2018).

the satisfaction of disaster victims' protection needs through implementation of their human rights. The HRBA to disaster management is disaster victim-centered and constitutes a powerful reminder that disaster victims are right-holders and that those who deliver disaster assistance should treat them as such.

3. How Implementation of the HRBA to Disaster Management Would have Minimized Loss of Lives in Puerto Rico

The HRBA to disaster management is an operational and conceptual framework that is not new to the U.S. The UN Human Rights Committee analyzed the U.S.'s second and third periodic reports on the implementation of the 1966 UN Covenant on Civil and Political Rights in 2006,²⁰ and made important recommendations on how to ensure that the recovery from Hurricane Katrina and disaster management in general were buttressed by human rights norms and principles binding on the U.S.²¹ One of these recommendations concerned the far-reaching prohibition of discrimination, based on certain internationally recognized grounds, "in law or in fact in any field regulated and protected by public authorities,"²² as set out in Article 26 of the UN Covenant. Accordingly, the Committee recommended that the U.S. increase, "[i]n the aftermath of Hurricane Katrina . . . its efforts to ensure that the rights of the poor . . . [were] fully taken into consideration in the reconstruction plans with regard to access to . . . healthcare."²³ The Committee's recommendation can be interpreted as suggesting that U.S. disaster management strategies, in order to comply with Article 26, generally must not neglect disaster victims' domestic rights with regard to access to health care. Furthermore, any neglect of rights cannot be based on any of the internationally proscribed grounds of discrimination: race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

The closest clarification of what a disaster-affected State could concretely do to guarantee disaster victims' *rights with regard to access to health care* under Article 26 of the above UN Covenant is contained in the *UN Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*.²⁴ The guidelines were prepared in 2011 and help understand how to implement provisions contained in UN Human Rights treaties in natural disaster settings. Guideline B.2.5 on the right to health states that competent authorities should plan health interventions so as to provide health care timely and without discrimination, by giving priority consideration to: disaster-affected persons requiring medical attention because of pre-existing medical conditions; disaster victims who have developed

²⁰ The US ratified the Covenant on Civil and Political Rights in 1992 and is required, by virtue of Article 40 of the Covenant, to submit to the Human Rights Committee periodic reports on measures adopted to give effect to the Covenant rights domestically. More information on how the Human Rights Committee monitors compliance with the Covenant on Civil and Political Rights by States that have adhered to it is available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx>.

²¹ Human Rights Committee, *Concluding Observations on the Second and Third Periodic Reports of the USA*, CCPR/C/USA/CO/3/Rev.1, para. 26 (Dec. 2006).

²² Human Rights Committee, *General Comment No. 18: Non-Discrimination* (Nov. 10, 1989) HRI/GEN/1/Rev.9 (Vol. I), para. 12.

²³ *Supra* note 21.

²⁴ The guidelines are available at http://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines_IDP.pdf.

medical conditions as a result of the impact of a natural disaster; and disaster victims who have developed medical problems during the overall humanitarian response.²⁵

In its management of Hurricane Maria in Puerto Rico, the U.S. should not have overlooked the recommendation of the Human Rights Committee. The U.S. should have implemented the HRBA to disaster management embedded in the recommendation read together with Operational Guideline B.2.5. Implementing the HRBA to disaster management would have made the U.S. more mindful of the various health needs that Hurricane Maria victims were likely to have in the aftermath of the disaster, and would have paved the way to the realization of these persons' domestic rights relevant to access to health care. This approach would have made competent authorities strive for early and well-thought-out planning of arrangements, including coordination arrangements, for the timely provision of health care by all the providers involved in the recovery from Hurricane Maria to all the affected persons who needed it.

Put more simply, the implementation of the HRBA to disaster management would have minimized the loss of lives in the months following Hurricane Maria. It would have avoided tainting the disaster management strategy in Puerto Rico by instances of *prima facie* discrimination against the residents of Puerto Rico based on their legal status as second class US citizens in contravention of Article 26 of the Covenant on Civil and Political Rights.

Conclusions

The HRBA to disaster management is a conceptual and operational framework that if duly implemented can radically change the way in which competent governmental authorities deal with disasters. The HRBA to disaster management is tailored to the protection needs of disaster victims; averts the risk that some of them may be subjected to unlawful differential treatment; and empowers disaster victims. Equally important, the HRBA to disaster management highlights, for stakeholders involved in disaster management, steps and strategies to undertake in order to provide timely and effective relief to all affected individuals and build resilience to disasters. Implementation of the HRBA to disaster management in Puerto Rico would have made a difference: it would have contributed to save lives and afforded Hurricane Maria victims disaster assistance on an equal footing. Lack of its implementation indicates the need for the U.S. to review follow-up on the UN Human Rights Committee's recommendations on disaster management. The review should result in: extrapolation of lessons learned encapsulating the HRBA to disaster management; application of the lessons to future disaster settings; and, more fundamentally, a re-conceptualization of disaster risk reduction, preparedness, response, and recovery through a human rights lens so as to make them fairer, more inclusive, and disaster victims-centered.

²⁵ *Id.*

The United States Erodes Human Rights with Withdrawal from Human Rights Council

August 1, 2018
by Andrew Johnson

The United Nations Human Rights Council (HRC) was created in 2006 by the [UN General Assembly Resolution 60/251](#). The [purpose of the HRC](#) is to develop friendly relations among nations and to build respect for the principles of equal rights and self-determination. Furthermore, [the HRC](#) upholds the [Universal Declaration on Human Rights \(UDHR\)](#) and other international human rights instruments. [Forty-seven](#) countries are elected to the HRC for three-year terms. Each country is [elected by a secret ballot](#) with a majority of members in the General Assembly to ensure impartiality and equal representation of the UN Member States.

Moreover, the HRC examines the [human rights record](#) of every country that is a member to the UN. In 2017, the states receiving the [most recommendations](#) to remedy their human rights violations were China, Iran, Egypt, North Korea, and Vietnam. In addition to examining every country, the HRC sends [independent investigators](#) to address specific situations. The two most recent inquiries were in Syria and South Sudan in 2017.

On June 19, 2018, the United States became the [first country to withdraw from the HRC](#) since its formation. The withdrawal is unprecedented, and its repercussions will detrimentally affect the protection of human rights around the world. The [main reason for the withdrawal cited by the U.S. Ambassador to the UN](#) was that the HRC is biased against Israel. The HRC focuses its investigations globally, not solely on Israel. However, it [investigates Israel](#) because it is obliged to under its mandate, not because of an anti-Israel bias like the U.S. claims.

The U.S. also claims the council is biased and hypocritical since some of the countries that have been elected have also committed human rights violations. The HRC has passed [many resolutions](#) that condemn Israel's conduct in Palestine as human rights violations. Although the Israel-Palestine conflict receives a lot of scrutiny, the HRC has also [passed resolutions condemning](#) North Korea, Myanmar, Sudan, and many others. The council focuses on all UN member countries, ensuring that they uphold human rights. As an elected member of the council, the U.S. has a [high standard](#) to meet to protect human rights. While there may be flaws in the organization, shrinking backwards into a policy of isolationism is not a productive response that will create solutions.

Moreover, the U.S. is not upholding [the commitments](#) it made when it submitted its bid to be elected. Members of the HRC are required, under paragraph nine of [GA resolution 60/251](#), to uphold the highest standards in the promotion and protection of human rights. Additionally, in [paragraph nine](#) the U.S. is obliged to fully cooperate with the council during its membership. In withdrawing its influence and support, the U.S. is neither protecting nor promoting human

rights. It is not cooperating with the council, even though its function is to [serve as a forum for states](#) to address issues related to human rights.

The U.S. is not the only country that does not meet the criteria delineated in paragraph nine. According to Freedom House's annual ratings, at least twenty-three percent of states on the HRC are rated as "[not free](#)." But the U.S. is the only country that has stepped away from the body entirely, and its absence will only allow powerful countries with poor human rights records more influence. It is a gift of power to authoritative regimes that will use their influence to further undermine human rights and to refuse to fix any [systemic flaws in the HRC](#).

The United States' withdrawal from the HRC is not a death knell for human rights. The major human rights treaties like the [UDHR](#) and the [International Convention on Civil and Political Rights \(ICCPR\)](#) are binding customary international law. The U.S. is required by those treaties to uphold and respect human rights with its own citizens and extraterritorially. By quitting its commitments to the HRC, the U.S. not taking all measures to uphold and protect human rights.

If the U.S. truly wanted to address the problems within the HRC, it would commit to diplomacy and cooperation. The U.S. should encourage more countries to improve their human rights protections and to run for election, so that the HRC is not overcrowded with large, powerful countries. Furthermore, it should use the HRC as a forum to cooperate with other world leaders to create sustainable solutions to human rights issues, while also focusing internally to ensure it meets the criteria for membership as well. By setting a precedence of cooperation and self-accountability, a renewed model for human rights protection could be possible. Isolationism cannot be the answer; it is the time for faith in international cooperation.

Closing the Book on the Ríos Montt Guatemala Genocide Trial

August 6, 2018
by William Vazquez

On May 10, 2013, a historic moment in international criminal justice occurred. General José Efraín Ríos Montt, de facto President of Guatemala who rose to power through a military coup d'état in March 1982 and was deposed in August 1983, became the [first head of state to be convicted for genocide in a national court](#). After less than two months of trial, the Guatemalan High Impact Court “A” found General Ríos Montt [guilty of genocide and crimes against humanity](#) committed against Guatemala’s indigenous Maya Ixil people. Specifically, the court found that Ríos Montt had command responsibility and “full knowledge of what was happening,” yet did nothing to prevent the murder of 1,771 Ixiles; the forcible displacement of 29,000; sexual violence against at least nine individuals; and various cases of torture. He was sentenced to a combined total of eighty years in prison for his crimes while his codefendant, José Mauricio Rodríguez Sánchez, his former chief of military intelligence, was acquitted of all charges.

This historic moment was quickly undercut when, on May 20, 2013, [Guatemala's Constitutional Court overturned Ríos Montt's conviction](#) and “reset” his trial to an earlier date. [The trial's reset resulted](#) from his defense team’s arguments that Ríos Montt’s rights had been violated when his attorney was expelled early in the trial and that the head judge should have recused herself. Some suspect that outside factors, including [pressure](#) from [Guatemalan business elites](#) and [sectors of the Guatemalan military](#), went into this decision. A different tribunal, High Risk Tribunal “B,” [set a new trial date for January 5, 2015](#), but [the trial was suspended](#) after one judge recused herself from the trial over doubts about her impartiality because of her 2004 thesis on genocide.

On July 8, 2015, Ríos Montt was [found mentally incapable of standing trial](#), with doctors claiming that he was unable to understand any charges against him. Although the court found that Ríos Montt’s diagnosed dementia rendered him incapable of facing a regular trial, [Guatemalan law allowed for him to still be prosecuted](#). [Thus, the court decided to go forward with the trial](#)—one that would not be open to the public, not require Ríos Montt to be present, and not result in a punishment for him even if found guilty. [Yet the trial was again interrupted](#) after an appeals court found that the proceedings were illegal under Guatemalan law because codefendant Rodríguez Sánchez’s trial was required to be open and public. The High Risk Tribunal B finally decided that [the trial of Ríos Montt and Rodríguez Sánchez would resume on October 13, 2017](#), but that [they would be prosecuted separately and concurrently](#). In addition, another court determined that Ríos Montt should also stand trial for genocide and crimes against humanity in relation to the 1982 massacre at [Las Dos Erres](#) in which two hundred people were killed. Before his new trial could fully proceed, [Ríos Montt died of a heart attack](#) on April 1, 2018.

Despite his death, Ríos Montt’s case has important implications for transitional justice and international law as a whole. It [showed that national courts are capable of successfully](#)

[prosecuting and convicting heads of state for crimes against humanity](#) and for genocide. In light of the ongoing [negotiations on a potential international treaty on crimes against humanity](#), the history of his trial can provide both a positive example to other countries about how a national court can incorporate crimes against humanity into their criminal code and hold even the highest officials accountable as well as a cautionary tale about the challenges that can arise in doing so, [including delays, intimidation of judicial actors](#), and the struggle of maintaining a post-conflict peace. It and other cases related to Guatemala's internal conflict showed that [domestic, foreign, and international courts can positively reinforce one another](#) in enforcing justice, reducing impunity, and promoting and protecting human rights.

Most importantly, however, Ríos Montt's trial serves as an example of justice for victims even when no final conviction was reached. To some his death without a final conviction, like those of former leaders Slobodan Milošević and Augusto Pinochet, meant that he died free and with impunity. However, numerous Guatemalan voices reject this idea. Former Guatemalan Attorney General, Claudia Paz y Paz, [tweeted](#) that Ríos Montt "died facing justice." The Association for Justice and Reconciliation as well as victims and survivors of the genocide in Guatemala made clear that, [for them](#), the original May 10, 2013 sentence was valid: "Ríos Montt died under house arrest, having been convicted . . . He died guilty, facing a second trial. History will remember him that way."

Even though Ríos Montt is gone, proceedings against Rodríguez Sánchez and others accused of violations committed during Guatemala's internal conflict continue, leaving open an opportunity for a final resolution for victims, judicial actors, and all of Guatemala.

Means to an End: Border Separations Put Children's Mental Health on the Line

August 9, 2018
by Ridhi Shetty

Soon after the current administration announced a [zero-tolerance policy toward people illegally entering](#) the United States from Mexico, the policy resulted in over two thousand undocumented children being detained separately from their parents since April 2018. The detention of undocumented families is not a new phenomenon: the Obama administration held the [record of the most deportations with over two million](#) during former President Obama's eight-year term. Each administration's policies differed, however, in their intentions toward detained migrants' well-being.

The Obama administration's policy [reacted to a critical increase](#) in undocumented families and unaccompanied children, addressing the necessity for sustainable long-term housing, the lack of understanding about immigration laws, and the violence driving migrants to flee their homelands. Despite this focus, the [Border Patrol's rampant abuse](#) of detainees was reported from 2009 through 2014. [Federal courts ruled in 2015](#) that undocumented children could not be detained for longer than a twenty-day period, so their families would need to be released together. The Trump administration's policy—possibly implemented as far back as October of 2016—was to [refer adult migrants for criminal prosecution](#), sending them to federal jails where children cannot be held. In the meantime, the Department of Health and Human Services was [responsible for caring for separated children](#), but poor coordination between agencies left no system to reunite families.

The Trump administration's policy has been scrutinized worldwide—the United Nations High Commissioner for Human Rights Zeid Ra'ad al-Hussein cited Dr. Colleen Kraft, president of the American Association of Pediatrics, in condemning the policy as “[government-sanctioned child abuse](#).” Based on her visit to border detention centers after the policy's implementation, Dr. Kraft asserted that the stress of family separation could “disrupt a child's brain architecture and affect his or her short- and long-term health,” leaving them “susceptible to learning deficits and chronic conditions such as depression, post-traumatic stress disorder and even heart disease.” The American College of Physicians and the American Psychiatric Association [agree that family separation causes negative health impacts](#)—including anxiety, developmental delays, and changes in bodily functions—that will persist for the rest of these children's lives. The effects are [evidenced in public hospitals and clinics](#) where children are now being treated for physical and mental illnesses resulting from the border separations.

By enforcing a policy that causes mental illness in children, the current administration violates multiple human rights treaties to which it is a party, specifically as they pertain to children's mental health. Article 1 of the [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...punishing him for an act he or a third person has committed...or for any reason based on discrimination” when

inflicted by or with the consent of “a public official or other person acting in an official capacity,” unless the pain only arises incident to lawful sanctions. Though [administration officials claim](#) that separating undocumented families is lawful, the border separation amounts to torture for children [ranging from infancy to the age of seventeen](#). The practice of separating children from their undocumented parents does not strictly serve to enforce lawful sanctions, as demonstrated by the absence of such a practice under previous administrations.

Additionally, Article 12 of the [International Covenant on Economic, Social, and Cultural Rights](#) guarantees the right to the highest attainable standard of physical and mental health. Article 3 of the [Convention on the Rights of the Child](#) further requires that all actions concerning children by public institutions and authorities be taken with the best interests of the children’s well-being and be in compliance with the standards enforced by competent authorities to preserve the children’s health. [Article 9](#) requires that children are not separated from their parents against their will unless separation is necessary for children’s best interests, that children have the right to maintain personal relations and direct contact with separated parents, and that separated children and parents be provided information regarding each other’s whereabouts upon request. [Article 24](#) requires effective and appropriate measures to abolish practices that prejudice children’s health.

Technically, [President Trump’s executive order in June](#) discontinued measures that resulted in family separation, but the administration has failed to meet a federal judge’s July 26 deadline to reunite families, with [over seven hundred children remaining](#) in government custody. The delay is [attributed to several factors](#), including deported parents trying to allow their children to remain in the United States; detained parents being coerced and misled into signing away reunification rights; and ongoing trauma deterring interviews with parents and children. Thus, [recovery down the road remains bleak](#) for these children, and the Trump administration may face ramifications specifically for the human rights violations arising from its act of aggressively and purposefully compromising children’s mental health.

AMLO and Ayotzinapa: A Renewal for the Rule of Law in Mexico?

August 10, 2018
by Ali Boyd

The Hague may be the legal capital of the world, but Latin America is undoubtedly the epicenter. The Netherlands boasts an unparalleled number of institutions ranging from the International Criminal Court to a variety of hybrid tribunals, but Latin America has been at the center of a renewal of accountability efforts. In a region synonymous with impunity, countries such as Guatemala are leading the “justice cascade,” a growing trend that utilizes trials in domestic courts to prosecute grave human rights abuses.¹ Instead of extraditing perpetrators to await a lengthy and costly trial in the Netherlands, former dictators and high-ranking military officials like Rios Montt are facing the rule of law in their home country.

With the July 1 electoral victory of the Morena party, Mexico is now squarely in the center of these accountability efforts. As the former mayor of Mexico City and third time presidential contender, Mexicans knew their candidate well. Andrés Manuel López Obrador, or “AMLO,” built his success on a campaign that promised a change from the status quo: a break with years of fighting a War on Drugs that has produced only staggering violence with a homicide rate that rivals a war zone.²

No case is more emblematic of the failed War on Drugs than that of Ayotzinapa.³ The disappearance of forty-three students from Iguala, Guerrero reflects the larger crisis of a systematic practice of enforced disappearance. In a country that obfuscates names and numbers by refusing to release accurate statistics, numbers matter. While the forty-three Ayotzinapa students are just a fraction of the 33,125 recorded disappearances in Mexico, the case has garnered the world’s attention as it ricochets throughout domestic courts, the regional Inter-American Human Rights system, and even at the universal level with the involvement of various agencies within the United Nations.⁴

Though the crime occurred almost four years ago, Ayotzinapa is deeply entrenched in the body politic. AMLO’s victory, coupled with an unexpected ruling from a Mexican court, has offered renewed hope for the rule of law in Mexico. The night of the presidential election, Ayotzinapa chants could be heard on the streets as people waited for poll numbers and precinct reports. The rallying cry of “vivos se los llevaron, vivos los queremos” (they were taken alive, we want them

¹ Micheline Ishay, Kathryn Sikkink’s *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*, Wash. Post, (Oct. 21, 2011), https://www.washingtonpost.com/entertainment/books/kathryn-sikkinks-the-justice-cascade-how-human-rights-prosecutions-are-changing-world-politics/2011/08/22/gIQAxk7M4L_story.html?noredirect=on&utm_term=.ad5411abbb7b.

² Azam Ahmed, *Mexico’s Deadliest Town. Mexico’s Deadliest Year.*, N.Y. Times, (Aug. 4, 2017), <https://www.nytimes.com/2017/08/04/world/americas/mexicos-drug-killings.html>.

³ See Francisco Goldman, *The Tragedy That Changed Mexico Forever*, N.Y. Times, (June 22, 2018), <https://www.nytimes.com/2018/06/22/opinion/ayotzinapa-mexico-students-disappeared.html>.

⁴ Datacívica: Más datos para más personas, <https://personasdesaparecidas.org.mx/db/db> (last visited July 27, 2018).

back alive), has finally been translated into legal action. For the first time in years, the rule of law could yield some substantial change.

Just twenty-seven days before the election, the First Collegiate Tribunal of the Nineteenth Circuit issued a sentence that explicitly condemned the use of torture and criticized the lack of impartiality of the Attorney General's office.⁵ The Ayotzinapa case would be complex for any judicial system. However, the context of the litigation has ensured a plethora of human rights abuses. Foundational to this litigation has been the right to truth. The court reaffirmed the fundamental right to truth as an internationally recognized right of the victim. Citing Article 1.1, 8, and 25 of the American Convention on Human Rights, the court highlights the essential role of the right to truth in disappearance cases and reminds the state of its obligations to ensure that victims have access to a factual account of what occurred on the night of September 26.⁶ Most stunningly, the Ayotzinapa sentence concludes by ordering the establishment of a Special Commission for Truth and Justice to rectify a legal process that has not been "independent nor impartial."⁷

The establishment of an Ayotzinapa truth commission is historic because it represents the evolution of a case many feared would be stagnant for years to come. As reiterated by Centro Prodh, the civil society organization representing the victims, a domestic court called on its own government to recognize the right to truth after the government contradicted reports by the U.N. High Commissioner for Human Rights, the Argentine Forensic Anthropology Team, and the Interdisciplinary Group of Independent Experts from the Inter-American Commission on Human Rights.⁸

In just one example of the last four years, the outgoing PRI administration allowed the leading transitional justice practitioners to conduct an investigation in Mexico, but after the Interdisciplinary Group of Independent Experts released a report that disagreed with Mexican officials, the experts were impugned in the press and spied on by the government.⁹ In contrast, the president elect addressed Ayotzinapa head on, featuring the case on his campaign website

⁵ Francisco Goldman, *The Tragedy That Changed Mexico Forever*, N.Y. Times, (June 22, 2018)

<https://www.nytimes.com/2018/06/22/opinion/ayotzinapa-mexico-students-disappeared.html>.

⁶ Amparo en revision, Primer Tribunal Colegiado del Decimonoveno Circuito (TCC), 203/2017 – 206/2017, Página 62 (Mex.)

http://sise.cjf.gob.mx/SVP/word1.aspx?arch=508/05080000211078340011012.doc_1&sec=Jes%C3%BAs_Desiderio_Cavazos_Elizondo&svp=1.

⁷ See *id.* at 561, 627; Francisco Goldman, *The Tragedy That Changed Mexico Forever*, N.Y. Times, (June 22, 2018) <https://www.nytimes.com/2018/06/22/opinion/ayotzinapa-mexico-students-disappeared.html>.

⁸ Press Release, *Historic Ruling in the Ayotzinapa Case*, Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. (Centro Prodh), (June 4, 2018), <http://centroprodh.org.mx/en/?p=869>; Daniella Burgi-Palomino, *LAWGEF Supports Argentine Forensic Anthropology Team Report Refuting Cocula Trash Dump Theory in Ayotzinapa Case*, Latin Am. Working Grp., (Feb. 9, 2016), <http://www.lawg.org/action-center/lawg-blog/69-general/1577-lawgef-supports-argentine-forensic-anthropology-team-report-refuting-cocula-trash-dump-theory-in-ayotzinapa-case>; Interdisciplinary Group of Independent Experts (IGIE), Inter-Am. Comm'n H.R., *Ayotzinapa Report: Research and initial conclusions of the disappearances and homicides of the normalistas from Ayotzinapa*, Summary, p. 26, (Sept. 6, 2015), http://media.wix.com/ugd/3a9f6f_e1df5a84680a4a8a969bd45453da1e31.pdf.

⁹ Azam Ahmed, *Spyware in Mexico Targeted Investigators Seeking Students*, N.Y. Times, (July 10, 2017), <https://www.nytimes.com/2017/07/10/world/americas/mexico-missing-students-pegasus-spyware.html?ref=nyt-es&mcid=nyt-es&subid=article>; Francisco Goldman, *The Tragedy That Changed Mexico Forever*, N.Y. Times, (June 22, 2018), <https://www.nytimes.com/2018/06/22/opinion/ayotzinapa-mexico-students-disappeared.html>.

and promising the establishment of the Sub-Secretary of Transitional Justice, Human Rights and Attention to Victims.¹⁰

Until now, the right to truth has been reduced to the mothers of the disappeared quite literally exhuming mass graves to find their disappeared children.¹¹ Amidst a 98% impunity rate, too often it is the family members who are on the frontlines of these investigations.¹² In a country with fragile institutions and a dearth of political will, transitional justice remains elusive. And yet, the imminent AMLO administration offers victims a sign of hope. Conceivably, this historic summer will come to represent a sea change for accountability: one in which the strategy of filing cases before the International Criminal Court or the Inter-American Court of Human Rights will become secondary, and domestic judicial institutions will instead lead the way for rule of law reform in Mexico.

¹⁰ Campaign Website of Andrés Manuel López Obrador, *Ayotzinapa*, <https://lopezobrador.org.mx/temas/ayotzinapa/> (last visited July 27, 2018); Martha Pskowski, *The Radical Amnesty Plan of Mexico's Next President*, New Republic, (July 2, 2018), <https://newrepublic.com/article/149508/radical-amnesty-plan-mexicos-next-president>.

¹¹ Ioan Grillo, *The Paradox of Mexico's Mass Graves*, N.Y. Times, (July 19, 2017), <https://www.nytimes.com/2017/07/19/opinion/mexico-mass-grave-drug-cartel.html>.

¹² The Center for Responsible Enterprise and Trade, *Mexico's New Fiscalía: A Way Out of Corruption and Impunity*, (Nov. 20, 2017), <https://create.org/news/mexicos-new-fiscalia-way-corruption-impunity/>.

International Aid—Providing More than Just Human Rights

August 14, 2018
by Abby Allardice

Many people believe that international aid is an idea steeped in human rights and humanitarian lore. It is true that international aid lifts up the most impoverished and vulnerable people in society, but this is a very narrow idea of what international aid can accomplish. The fight against global poverty has evolved into not just one of providing basic human rights and necessities, but more importantly, one of national security. Impoverished states can explode in violence overnight, governments can collapse and throw countries into chaos, and alienated and desperate people can overthrow the rule of law. States affected by conflict can quickly devolve into breeding grounds for [environmental devastation](#), [human trafficking](#), [spreading of disease](#), and—[most importantly—terrorism](#). By serving disenfranchised people, helping to rebuild communities, and working to create stability around the globe, the United States enhances its influence in the global community while also protecting its domestic and national security interests.

In fact, the conflicts in Syria and Africa have led to an overall decline in global peace, [making 2018 the tenth consecutive year of deterioration of world peace](#). These past ten years defy a trend of increasing stability and peace that stretches back to the end of World War II. [The Global Peace Index](#) blames a steep rise in terrorism, the impact of violence stemming from civil wars, and the number of refugees as key contributors to the decline in global peace. These factors result from a [lack of governance, stability, and the pillars of peace](#) such as social inclusion, transparency, and distribution of resources. However, it is important to note that the study also points out that countries can bounce back from war, given the opportunity. By using U.S. agencies such as USAID, the State Department, and the Millennium Challenge Corporation to help countries get back on their feet, international aid can stem violence, curb corruption, empower citizens, and ultimately lead to stability.

In the face of a weak foreign assistance structure and civilian capacity, the military must often step into an oversight and managerial role. In fact, [from 2002 through 2005](#), the Department of Defense significantly expanded its direct provision of foreign assistance in weak and failing states. By placing the burden on the military to help solve international strife, it taxes an already overburdened organization and places it in a role it was never equipped to handle. Having soldiers instead of aid workers on the ground can strain not only the mission, but also the relationship between the citizens and the military who are trying to help. After all, citizens would feel more empowered towards maintaining peace if aid organizations help them rebuild their towns and cities after violence than if a foreign military takes control.

Furthermore, civil war often creates an environment where terrorism can thrive. Although there are an infinite number of factors as to why someone might join a jihadist group, [war acts as a definite pull factor](#). As seen in [Afghanistan](#), [Algeria](#), [Iraq](#), [Yemen](#), and many more countries, conflicts often either birth terrorist movements or strengthen existing ones. ISIS often

successfully captured territory where the Syrian government was weak or non-existent, using the void left by the government to establish itself as a legitimate alternative for the Syrian people. Using the military in this gap-filling tendency in foreign interventions would not only tax an overstretched military by having it play a role it was not trained to undertake, but would also serve to undermine investments in civilian capacity building.

Instead, it would be more prudent for our national security strategy to include more foreign aid and collaborations with international aid agencies to ensure that peace can be more than a pipe dream. International aid presents numerous advantages, not just for the citizens receiving aid, but also for U.S. interests and solidifying alliances. For example, following the deadly bombings in Tanzania in 1998, where U.S. embassies were destroyed and lives were lost, USAID came in and helped the Tanzanians rebuild. The [Ambassador of Tanzania](#) believed that the work that USAID performed and the compassion they showed towards the Tanzanian people was crucial in building the alliance the U.S. enjoys to this day.

With hard power being spread increasingly thinner among states and non-state actors like ISIS, the U.S. needs a national security strategy that recognizes and embraces the concept of [aid over bullets](#) and takes a more humanitarian approach to aiding our fellow man. By focusing on international aid, it can help alleviate some of the drivers of insecurity and desperation. Not only does helping the poor gain access to medicine, shelter, food, education, and opportunity help Americans sleep better at night, but it also allows the U.S. to reinforce its influence worldwide, protect its citizens, and create a safer global network.

One Year Later, Arpaio's Pardon Still Constitutes a Violation of International Law

August 25, 2018

by Santiago Martinez-Neira & Alan Vogelfanger

I. INTRODUCTION

On August 25, 2017, the President of the United States, Donald Trump, pardoned Joseph Arpaio, the former sheriff of Maricopa County.¹ Arpaio was found guilty of criminal contempt² by a U.S. District Court in July 2017 for defying a court order from May 2013 that ordered him to stop racially profiling Hispanics.³

Arpaio has a long history in law enforcement. He served in the U.S. Army, in the Las Vegas and Washington D.C. Police Departments, and as a Special Agent for the Drug Enforcement Administration (DEA).⁴ In 1992, he was elected Sheriff of Maricopa County in Arizona. Not long after, he coined himself as “America’s toughest sheriff.”⁵ As sheriff, Arpaio’s practices included stopping cars and detaining drivers simply because they looked Hispanic. Additionally, many Hispanics deprived of liberty were subjected to humiliation and cruel treatment while in prison,⁶ including forcing inmates to wear pink underwear, pink handcuffs, and sleeping on pink sheets.⁷ He publicly acknowledged that he did this because he knew that pink was especially shameful to Hispanics, in light of their concept of manhood.⁸ To this day, taxpayers have spent more than 70 million dollars in reparations for Arpaio’s behavior but no criminal action was

¹ White House, Office of the Press Secretary (2017, August 25), President Trump Pardons Sheriff Joe Arpaio, available on <https://www.whitehouse.gov/the-press-office/2017/08/25/president-trump-pardons-sheriff-joe-arpaio>, last visited on 7/13/2018.

² United States District Court for the District of Arizona, U.S.A. v. Arpaio, Senior Judge Susan Bolton, 31 July 2017.

³ United States District Court for the District of Arizona, Ortega Melendres v. Arpaio, District Judge Murray Snow, 24 May 2013.

⁴ White House, Office of the Press Secretary (2017, August 25), President Trump Pardons Sheriff Joe Arpaio, available on <https://www.whitehouse.gov/the-press-office/2017/08/25/president-trump-pardons-sheriff-joe-arpaio>, last visited on 7/13/2018.

⁵ BBC (2017, August 26), Joe Arpaio: Life as 'America's toughest sheriff', available on <http://www.bbc.com/news/world-us-canada-41015549>, last visited on 7/13/2018.

⁶ Mettler, Katie (2017, April 5), New Sheriff in town to close Joe Arpaio’s outdoor Tent City jail, of pink underwear fame, available on https://www.washingtonpost.com/news/morning-mix/wp/2017/04/05/new-sheriff-in-town-to-close-joe-arpaio-s-outdoor-tent-city-jail-of-pink-underwear-fame/?utm_term=.4f9e970c6bd1, last visited on 7/13/2018.

⁷ *Id.*

⁸ Mak, Tim (2014, April 8), Arizona’s Tent City Jail: Where prisoners wear pink underwear, eat meatless meals and swelter in the 120-degree heat, available on <http://www.washingtonexaminer.com/arizonas-tent-city-jail-where-prisoners-wear-pink-underwear-eat-meatless-meals-and-swelter-in-the-120-degree-heat/article/2546924>, last visited on 7/13/2018; and video Salvados: ‘Le daría un abrazo pero tengo la espalda mojada’, available on <https://www.youtube.com/watch?v=x07HU0sxxeo&t=3s>, last visited on 7/13/2018.

brought against him.⁹ Although he was compelled by a Federal Court to stop the racial profiling of Hispanics, Arpaio continued the discriminatory practice, which resulted in the decision to hold him in contempt.

Donald Trump's pardon of Arpaio was highly criticized.¹⁰ Some scholars and politicians argued that even though the power to pardon was broadly defined in the Constitution, the use of this presidential privilege, in the context of the charges against Arpaio, was unconstitutional.¹¹ Although the pardon power is unquestionably a presidential prerogative, this article will argue that regardless of whether or not it is constitutional under U.S. law, the pardoning of Arpaio violates international law principles and norms. President Trump's decision constitutes a human rights violation because pardons are not above international law and, therefore, are limited by the obligation to investigate, prosecute, and punish grave human rights violations and to provide an appropriate reparation to victims. In particular, since the matter centers around the principle of non-discrimination, one of the core issues of international human rights law, the pardon in question cannot be accepted if its practical consequence is the lack of an effective remedy for those affected by Arpaio's practices.

II. THE UNITED STATES' OBLIGATIONS UNDER INTERNATIONAL LAW

The United States ratified the International Covenant on Civil and Political Rights (ICCPR) on June 8, 1992. The Human Rights Committee (HRC), which is the designated body to interpret the ICCPR and whose decisions constitute authoritative guidance, has established that a failure to take appropriate measures or to exercise due diligence to prevent, punish, investigate, or redress harm would give rise to a violation by State Parties.¹² Article 2.3.a demands that State Parties "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy." Therefore, the treaty demands that "in addition to effective protection of Covenant rights State Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights."¹³

The HRC requires "appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law"¹⁴ and established that a failure by a State Party to

⁹ Cassidi, Megan (2017, August 17), Taxpayer tab up to \$70M in Joe Arpaio racial-profiling case, available on <http://www.azcentral.com/story/news/local/phoenix/2017/08/17/taxpayer-tab-up-70-m-joe-arpaio-racial-profiling-case/576878001/>, last visited on 7/13/2018.

¹⁰ Tribe, Laurence; Fein, Robert (2017, September 18), Trump's pardon of Arpaio can — and should — be overturned, available on https://www.washingtonpost.com/opinions/the-presidential-pardon-power-is-not-absolute/2017/09/18/09d3497c-9ca5-11e7-9083-fbdf6804c2_story.html?utm_term=.19582877245a, last visited on 7/13/2018.

¹¹ *Cfr.* Proposed Memorandum of Amici Curiae from certain members of the Congress in opposition to defendant's motion for vacatur and dismissal with prejudice (2017, September 27); Proposed Memorandum of Amici Curiae Erwin Chemerinsky, Michael E. Tigar, and Jane B. Tigar (2017, September 11); and Tsai, Robert (2017, September 1), The Troubling Sheriffs' Movement That Joe Arpaio Supports, available on <https://www.politico.com/magazine/story/2017/09/01/joe-arpaio-pardon-sheriffs-movement-215566>, last visited on 7/13/2018.

¹² *Cfr.* HRC, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, par. 8.

¹³ *Id.*, par. 15.

¹⁴ *Id.*

investigate allegations of violations of human rights could give rise to a breach of the ICCPR.¹⁵ To fulfill this obligation, State Parties must ensure that those responsible for violating the rights enshrined in the Covenant are brought to justice; failure to investigate or to bring to justice perpetrators of such violations could give rise to a breach of the Covenant.¹⁶ Finally, the HRC also stated that where public officials or State agents have violated the Covenant, the State Parties concerned may not relieve perpetrators from personal responsibility, as has occurred with some amnesties or prior legal immunities and indemnities.¹⁷

Furthermore, the United States also ratified the Charter of the Organization of American States (OAS) on June 19, 1951. As a result, the United States is subject to the obligations enumerated in the treaty and in the American Declaration of the Rights and Duties of Man (American Declaration) because, for OAS member States, the American Declaration outlines the commitments and obligations of the Charter.¹⁸ Additionally, most of the core articles of the American Declaration are customary international law, including the right to liberty, due process, and a fair trial.¹⁹ The Inter-American Commission on Human Rights (IACHR) has affirmed that States must refrain from “supporting, tolerating or acquiescing in acts or omissions that contravene their human rights commitments.”²⁰ Therefore, States must not only refrain from committing human rights violations but must adopt affirmative measures to guarantee that the individuals subject to their jurisdictions can exercise and enjoy the rights contained in the American Declaration.²¹

The State’s duty to implement human rights obligations in practice encompasses preventing, responding, punishing, and providing remedies to the acts that constitute a violation.²² This duty is known as the principle of due diligence. Indeed, establishing measures that eliminate responsibility for human rights violations is inadmissible when the objective is to prevent the investigation and punishment of those responsible for serious human rights violations.²³

As the IACHR conveyed in the *Gustavo Carranza vs. Argentina* case, a pardon can constitute an infringement of the American Declaration if it results in judicial inaction in the face of a manifest violation of human rights,²⁴ or if the effects of the pardon violate the human rights recognized in the Declaration.²⁵ In *Carranza*, a former Argentinean Judge who was removed by the military government tried to seek the nullification of the decision. However, the National Supreme Court of Justice adjudicated the merits of the petitioner’s claim based on the political question doctrine,

¹⁵ *Id.*

¹⁶ *Id.*, para. 18.

¹⁷ *Cfr.* HRC, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, p. 15; and General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, par. 18.

¹⁸ *Cfr.* IACHR, *James Terry Roach and Jay Pinkerton v. United States*, Resolution 3/87, Case 9.647, 22 September 1987, par. 49; *Universalization of the Inter-American System of Human Rights*, 14 August 2014, par. 50; *Victor Saldaño v. United States*, Report No. 24/17, Case 12.254, 18 March 2017, par. 76.

¹⁹ *Cfr.* IACHR, *Lares-Reyes v. United States*, Report 19/02, Case 12.379, 27 February 2002, par. 46.

²⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Report No. 80/11, Case 12.626, 21 July 2011, par. 116.

²¹ *Ibid.*, par. 118.

²² *Ibid.*, par. 119.

²³ IACtHR, *Barrios Altos v. Peru*, 14 March 2001, par. 41.

²⁴ *See* IACHR, *Carranza v. Argentina*, Report No. 30/97, Case 10.087, 30 September 1997, par. 50.

²⁵ *Ibid.*, par. 63.

which impeded a substantial analysis of the situation. The IACHR decided that, by not providing the Judge with an appropriate remedy, Argentina committed a violation of the right to a fair trial and the right to judicial protection. The Commission also stated that the political question doctrine could not be used to deprive someone from an effective remedy. Moreover, the Commission has referenced the harmful effects of impunity, stating that “when the perpetrators are not held to account . . . the impunity confirms that such violence and discrimination is acceptable, thereby fueling its perpetuation.”²⁶

III. ARPAIO’S ACTIONS CONSTITUTE A SERIOUS VIOLATION OF THE PRINCIPLE OF *NON-DISCRIMINATION*

The principle of *non-discrimination* is at the core of international law. In fact, the international legal order stands, among others, on this principle, which today belongs to the category of *jus cogens* norms.²⁷ According to the Vienna Convention on the Law of the Treaties, this means that it is a peremptory norm of general international law that is “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”²⁸ States must refrain from taking actions or adopting measures that discriminate, directly or indirectly, against any person or group of persons under their jurisdiction. Additionally, States must not tolerate any norm or act that contradicts this principle; on the contrary, they must take actions to abolish the legal effects of any norm, *de facto* or *de jure*, that tolerate or promote discrimination of any type.

Racial profiling constitutes a serious violation of the principle of *non-discrimination*, both at the domestic and international levels. The practice known as “driving while Latino”²⁹ was frequently employed by former sheriff Arpaio during his tenure. Under this practice, individuals were stopped and detained solely because they looked like they had Hispanic origins. Using racial criteria to identify and detain people who might not have a regular migratory status under the guise of enforcing driving infractions is highly discriminatory and unacceptable on any legal grounds.

Indeed, in May 2013, the United States District Court for the District of Arizona ordered Arpaio to stop, 1) detaining, holding, or arresting Hispanic occupants of vehicles in Maricopa County based only on the belief, however reasonable, that such persons are in the country without authorization; 2) using race or Hispanic ancestry as a factor in determining whether to stop any vehicle in Maricopa County with a Hispanic occupant; and 3) using race or Hispanic ancestry as

²⁶ IACHR, *The situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination*, 3 March 2013, par. 128.

²⁷ IACtHR, *Advisory Opinion on the juridical condition and rights of the undocumented migrants*, 17 September 2003, par. 101.

²⁸ Vienna Convention on the Law of the Treaties, article 53.

²⁹ Stuesse, Angela (2016, September 30), *Driving While Latino*, available on https://www.huffingtonpost.com/entry/driving-while-latino_us_57ed6ce4e4b07f20daa1052f, last visited on 7/13/2018.

a factor in making law enforcement decisions with respect to whether any Hispanic occupant of a vehicle in Maricopa County may be in the country without authorization.³⁰

Arpaio violated the order resulting in a U.S. Federal Court holding him in criminal contempt. Senior Judge Susan Bolton, from the District Court for the District of Arizona, underscored that Arpaio was still detaining and arresting immigrants and that he had even challenged the judiciary by stating: “If they don’t like what I’m doing, get the laws changed in Washington”³¹; and “until the laws are changed my deputies will continue to enforce state and federal immigration laws.”³²

On August 25, 2017, President Donald Trump pardoned Arpaio.³³ However, pardoning contempt for committing discriminatory actions should be considered unlawful, as the State would go from committing and tolerating discrimination to actively promoting it.

IV. CONCLUSION

Racial profiling is a serious violation of international human rights law. Arpaio, a U.S. law enforcement officer, committed these practices against the law of nations, which is binding on the State. He was ordered by a court to cease profiling on the basis of race, yet he continued to engage in these practices and was held in criminal contempt for ignoring the order. Failing to punish him for his actions through a pardon means that the United States is in violation of international law.

The use of the presidential prerogative to issue pardons, which is recognized in article 2, section 2, clause 1 of the U.S. Constitution, is not a violation of international human rights law *per se*. However, if the pardon or its effects result in a violation of any of the rights protected by the ICCPR and/or the American Declaration, then undoubtedly international human rights law has been violated.

In the present case, the final effect of the pardon will be to: 1) preclude sentencing and punishment for willfully defying a court order for conduct entailing a violation of the *jus cogens* principle of *non-discrimination*; 2) leave the victims without an appropriate remedy; and 3) encourage other sheriffs to engage in these kinds of illicit practices. Since Arpaio’s actions will end in impunity for the lack of punishment, the situation constitutes an internationally wrongful act, which generates State responsibility. The pardon of the contempt implies that grave human rights violations will not be properly addressed. However, the true significance of the pardon is that it suggests that the former sheriff’s actions as a whole were non-reproachable and that the violations can be repeated.

The United States has frequently been criticized by United Nations bodies for its discriminatory practices.³⁴ In this sense, Arpaio’s discriminatory actions, and the failure to investigate and

³⁰ United States District Court for the District of Arizona, *Ortega Melendres v. Arpaio*, District Judge Murray Snow, 24 May 2013, p. 141-142.

³¹ United States District Court for the District of Arizona, *U.S.A. v. Arpaio*, Senior Judge Susan Bolton, 31 July 2017, p. 3.

³² *Ibid*, p. 6.

³³ White House, Office of the Press Secretary (2017, August 25), President Trump Pardons Sheriff Joe Arpaio, available on <https://www.whitehouse.gov/the-press-office/2017/08/25/president-trump-pardons-sheriff-joe-arpaio>, last visited on 7/13/2018.

punish them, are not isolated occurrences. For example, the HRC has recommended that the U.S. government implement measures to effectively combat and eliminate racial profiling by federal, state, and local law enforcement officials, and to expand protection against profiling on the basis of religion, religious appearance, or national origin.³⁵ The Committee on the Elimination of Racial Discrimination also expressed its concerns because of “the practice of racial profiling of racial or ethnic minorities by law enforcement officials, including the Federal Bureau of Investigation (FBI), the Transportation Security Administration, border enforcement officials, and local police.”³⁶ One of its recommendations was for the United States to undertake “prompt, thorough, and impartial investigations into all allegations of racial profiling, surveillance, monitoring, and illegal intelligence-gathering; holding those responsible accountable; and providing effective remedies, including guarantees of non-repetition.”³⁷ Finally, the United Nations Working Group on Arbitrary Detention (UNWGAD) recently found that “the current level of detention of immigrants demonstrates an excessive use of immigration-related detention that cannot be justified based on legitimate necessity”³⁸ and that it has cost United States taxpayers “approximately \$2 billion annually.”³⁹

In pardoning Arpaio the United States is sending the message that Arpaio’s actions were not wrong or reprehensible. The government is not only saying that it is acceptable to disregard a judicial order, but that profiling, discriminating against, and humiliating people because of their origin is permissible. In conclusion, this pardon jeopardizes the rule of law and the fundamental pillars of international human rights law.

³⁴ *Cfr.* HRC, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, 23 April 2014, p. 4; CERD, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, CERD/C/USA/CO/7-9, 25 September 2014, p. 3; and GA, Report of the Working Group on Arbitrary Detention on its visit to the United States of America, A/HRC/36/37/Add.2, 17 July 2017, par. 24.

³⁵ *Cfr.* HRC, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, 23 April 2014, p. 4.

³⁶ CERD, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, CERD/C/USA/CO/7-9, 25 September 2014, p. 3.

³⁷ *Ibid.*, p. 3-4.

³⁸ GA, Report of the Working Group on Arbitrary Detention on its visit to the United States of America, A/HRC/36/37/Add.2, 17 July 2017, par. 31.

³⁹ *Ibid.*, p. 24.

Brazilian Debt Bondage—Re-Defining Modern Day Slavery

October 12, 2018
by Victoria Kadous

Debt bondage (or bonded labor) has been classified by many countries as a [modern-day form of slavery](#). Debt bondage has been linked to multiple sectors such as [agriculture, logging, construction, and domestic work](#). Debt bondage occurs when a person's labor acts as a means to [repay some form of loan](#). As the worker is trying to pay off their expenses the debt only becomes larger, leading to a never-ending cycle.

In Brazil, the vast majority of workers in [logging, ranching, deforestation, agriculture, and charcoal](#) are in debt bondage. Workers are often [persuaded to leave their towns](#) to work in the Amazon. Without the worker's knowledge, [employers then charge](#) them for things like travel to the worksite and lodging at the worksite. These costs are then further enhanced by [high interest rates](#) creating a large debt that the laborer cannot get out of.

In October of 2017, the Brazilian government issued a [decree](#) attempting to limit the definition of slave labor in order to lessen the instances in which debt bondage could be defined as slave labor. The proposed change would limit the definition of slave labor to instances where workers are [restricted in movement](#). Under the proposed definition change, a person who is not fed, has no place to sleep, and makes no wages could not be classified as a slave if they were [physically able to walk away](#) from their place of work but chose to remain in those conditions. The proposed change [received immediate pushback](#) from human rights groups and was later retracted.

Debt bondage as a whole has been used for centuries to control vulnerable populations through [human, labor, and sex trafficking](#). These forms of trafficking have recently been labeled as [modern-day slavery](#) by the United Nations via the [Palermo Protocol](#). Article 4 of the [Universal Declaration on Human Rights](#) expressly states that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all other forms.” While the Universal Declaration of Human Rights (UDHR) is not binding on nations through an individual enforcement mechanism, it is [customary international law](#) which creates a sense of legal obligation to uphold the tenets of the agreement. In addition to the UDHR, Brazil has ratified the [International Covenant on Civil and Political Rights](#) (ICCPR) in 1992. The ICCPR is legally binding and is based on the UDHR. Article 8 of the ICCPR echoes the obligation under the UDHR by [prohibiting all forms of slavery and forced labor](#).

In addition to the UDHR and ICCPR, Brazil further agreed to be bound by the American Convention on Human Rights (ACHR) by ratifying the Convention in [1992](#). [Article 6](#) of the ACHR explicitly states that “no one shall be subject to slavery or involuntary servitude” and that “no one shall be required to perform forced or compulsory labor.” Unlike the UDHR, which was more of an initial [foundation](#) for international human rights recognition, the ACHR is binding on its signatories through a designated [Commission and Court](#). The Commission on Human Rights

and Court of Human Rights hears violations and renders judgment on nations who violate the [Convention](#).

When signing the [ACHR](#), Brazil authorized the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights to have jurisdiction on all matters relating to the Convention indefinitely. The Convention specified that slavery and forced labor were forms of prohibited conduct in the [signatory nations](#). Brazil did not attempt to reinterpret slavery or forced labor as defined by the Convention, only providing its alternate interpretation of Articles [43 and 48\(d\)](#) regarding site visits and procedures for investigation of violations. Therefore, Brazil is legally bound by this Convention and its interpretations of [slavery and forced labor](#). At the core of [defining](#) slavery under the Convention is whether the deprivation of liberty is present absent any prison sentence, military service, immediate danger to the community, or civil obligation. Further, the Convention specifically highlights [trafficking in women](#) as a form of slavery, which is regularly accompanied by [debt bondage](#) of some form. Because of this [link between debt bondage](#) and modern-day slavery by the ACHR, its extensive usage in Brazil for labor in logging, ranching, deforestation, agriculture, and charcoal is in violation of international human rights obligations.

United States Immigration Policy Sinks to a New Low

October 13, 2018
by Susan Imerman

As of May 2018, there were [25.4 million](#) refugees living outside of their homes, desperately seeking safety from their war-torn nations. This unprecedented number surpasses the entire population of New York State and is five times greater than the population of Ireland. Out of the millions of refugees currently awaiting resettlement, [less than 0.5%](#) were actually resettled in the past year. Yet, at a time when so many are desperately seeking refuge, the Trump administration [recently announced](#) its plan to reduce the refugee admissions cap in the United States to a historical all-time low.

The term “refugee” was first defined in the [1951 United Nations Convention](#) which also established the first internationally recognized laws related to refugee admissions. Years later, The United States joined this global commitment to protect refugees when it signed the [United Nations 1967 Protocol](#). Congress eventually incorporated the international treaty into U.S. law with the [Refugee Act](#) of 1980 (the Act), providing the legal basis for today’s [U.S. Refugee Admissions Program](#) (USRAP). Under U.S. law, the President, in consultation with Congress, sets a ceiling for refugee admissions each year. According to [the Act](#), “the number of refugees who may be admitted ... may not exceed fifty thousand.” However, the Act allows for an excess of the cap should the President deem it to be justified “by humanitarian concerns” or “national interest.” Although the refugee cap has fluctuated over time, since 1975, the United States has resettled over three million refugees, admitting 207,000 in 1980 alone.

Until recently, the [lowest annual refugee admission](#) was 27,110 and occurred the year after 9/11. However in 2018, the President’s senior policy advisor, Stephen Miller, and U.S. Secretary of State, Mike Pompeo, [advocated](#) to decrease the cap to 25,000 refugees, the lowest in our country’s history. The program’s fate rests largely in the hands of Mr. Miller, a strong [anti-immigration advocate](#) who recently gained allies due to abrupt staffing changes in the White House. In the past eighteen months, two of the three cabinet secretaries who pushed back on lowering immigration admissions—Rex Tillerson, former Secretary of State, and Elaine Duke, former Secretary of Homeland Security—were [replaced](#) by officials with similar political ideologies to Mr. Miller. Furthermore, officials at the [National Security Council](#) who previously opposed Mr. Miller’s efforts to slash refugee numbers, have also left or been forced out. In their place, two men close to Mr. Miller and who are also in favor of drastically cutting U.S. refugee numbers have been named to senior positions within the State Department: [Andrew Veprek](#), the Deputy Assistant Secretary of Refugees and Migration, and [John Zadrozny](#), a policy planning staff member.

The administration’s explanation for the abrupt shift in U.S. immigration policy has varied, with many officials citing national security concerns as a reason for the drastic cut in refugee numbers. White House Press Secretary Sarah Huckabee Sanders [declared](#) that Mr. Trump “wants to make sure whoever comes into the country, we know who they are, why they’re coming, and

that they pose no danger or threat to Americans.” Secretary Pompeo further [stated](#) that the reduced refugee cap “reflects our commitment to protect the most vulnerable around the world while prioritizing the safety and wellbeing of the American people.”

In response to the Trump administration’s claims, there have been numerous cries of outrage around the international humanitarian community. [Amnesty International](#), an NGO with the third-longest history in the field of international human rights, [contended](#) that the administration’s announcement “demonstrates another undeniable political attack against people who have been forced to flee their homes,” and that “[t]here is absolutely no excuse for not accepting more refugees in the coming year.” The International Rescue Committee further echoed their concerns, [urging](#) that, “The United States is not only abdicating humanitarian leadership and responsibility-sharing in response to the worst global displacement and refugee crisis since World War II, but compromising critical strategic interests and reneging on commitments to allies and vulnerable populations.”

Despite the international community’s objections, the administration [defends](#) that the United States is still the “most generous nation in the world when it comes to protection-based immigration.” Regardless of the outlook, one aspect of the new refugee policy is clear: at a time when [68.5 million people](#) have been forcibly displaced worldwide, the U.S. has chosen to divert its international commitments and reduce the admissions cap from 50,000 to its lowest point in the program’s almost forty-year history. The policy shift will undoubtedly have a ripple effect across the globe—refugees who might have formally resettled in the United States must now seek refuge in a new nation or risk living in limbo for the remainder of their lifetime.

South Carolina's Failure to Protect Prisoners During Hurricane Florence Raises Human Rights Concerns

October 17, 2018
by Rachel Cundiff

Each fall, dangerous weather conditions brought by [hurricane season](#) threaten communities in the southeastern part of the United States. Many of the citizens in these communities are able to take the safety precautions necessary to prevent the storm from bringing devastation to their lives. But there is one population whose ability to take shelter during the storm is entirely out of their own hands: the incarcerated. Prison populations are directly under the control of the state, and it is the state's duty to ensure that they are safe during dangerous weather conditions. The state's failure to do so raises concerns about the infliction of cruel and unusual punishment and the violation of the prisoners' human rights.

Poor treatment of prisoners during hurricanes is a recurring problem. During Hurricane Katrina, [Louisiana prisoners](#) were not permitted to evacuate state prisons in anticipation of the storm and were later forced to remain in their cells amid dangerous flooding when prison guards abandoned them to evacuate. Last year during [Hurricane Harvey](#), the Texas government refused to allow for the evacuation of prisoners despite the treacherous storm. In September of this year, Hurricane Florence threatened coastal communities throughout the Carolinas. South Carolina in particular was faced with heavy rains, winds, and dangerous storm surges. Despite South Carolina Governor Henry McMaster's order for [mandatory evacuations](#) along the coast of the state, accompanied by his claim that he did not want to "risk one South Carolina life in this hurricane," state officials [chose not to evacuate](#) prisons across the state even if the prisoners were incarcerated in mandatory evacuation zones. As a result, prisoners were forced to sustain the dangerous storm conditions while locked inside a confined space with virtually no opportunity to flee to safety. The decision of the South Carolina government raises questions about the treatment of South Carolina prisoners in general, the value that the South Carolina government places on the lives of their prisoners, and the potential human rights violations created by forcing them to sustain potentially life-threatening weather conditions while locked inside cells.

South Carolina's potential human rights violations are evident in light of both [national](#) and [international human rights guidelines](#). The treatment of prisoners in the United States is subject to [scrutiny](#) under the [Eighth Amendment](#) of the United States Constitution. The fact that prisoners continue to be protected by the Constitution from cruel and unusual punishment indicates that even though they have been deprived of a significant degree of freedom, they are still afforded liberties by the Constitution, and the state is not permitted to ignore their rights upon their sentencing to prison. Furthermore, in the international setting, [Article 10 of the International Covenant on Civil and Political Rights \(ICCPR\)](#) provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." South Carolina's decision to issue a mandatory evacuation indicates that the [safety and well-being of many citizens was a central concern](#) to the state. The refusal to allow

prisoners to join the evacuees makes clear both that South Carolina is not concerned with the safety and well-being of their prisoners and that they have not shown respect to the Constitution's protection of this population. When considered within the context of these legal and ethical standards that governments are called to abide by as they control prison populations, South Carolina's behavior in this situation indicates a potential constitutional violation and a clear human rights violation. Forcing prisoners to sustain dangerous storm conditions while locked inside a cell, as every other citizen outside of the prison is evacuated from the geographical area, is not consistent with humane and dignified treatment of prisoners.

The impact that hurricanes have on southern communities is only going to worsen as the [climate continues to change](#) and severe weather patterns become more prominent. To respect the civil and human rights of all prisoners and thus comply with the United States Constitution and various international standards, governments should treat prison populations humanely when making preparation and safety decisions in anticipation of natural disaster. Locking citizens who have been convicted of crimes in cells is not cruel and unusual punishment. But locking them in these cells and abandoning them during potentially devastating weather conditions is cruel, unusual, and inhumane.

Matter of A-B-: What This Means for Victims of Domestic Violence

October 29, 2018
by Marcela Velarde

Immigration authorities and courts have long struggled with whether or not victims of domestic and gang-based violence should [qualify for asylum](#). One of the most difficult barriers for victims is establishing that they meet one of the five protected grounds for asylum, particularly [membership in a “particular social group,”](#) which has become considerably harder with the changing political climate under the Trump administration. In June 2018, *Matter of A-B-* overruled the precedential decision of *Matter of A-R-C-G-*, holding that women could no longer apply for asylum by claiming they were victims of [“private criminal activity that constitutes persecution on account of membership in a particular social group.”](#) thus calling into question the viability of domestic and gang-based violence asylum claims.

Since August 26, 2014, immigration lawyers relied heavily on *Matter of A-R-C-G-* to establish that women fleeing domestic violence could be eligible for asylum. *Matter of A-R-C-G-* was the first case where the Board of Immigration Appeals declared “married women . . . who are unable to leave their relationship,” to be a cognizable particular social group. This landmark asylum decision arose after a Guatemalan woman, who endured physical and sexual spousal abuse for years, fled Guatemala and filed an asylum application, effectively demonstrating that her husband harmed her on the basis of her gender and status as a wife. As a result, other domestic violence victims were able to seek asylum by [pointing to evidence that mirrored the evidence cited in *Matter of A-R-C-G-*](#). However, on June 11, 2018, Attorney General Jeff Sessions [overruled *Matter of A-R-C-G-*](#) with *Matter of A-B-* by establishing that an asylum claim cannot be granted on “the mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime.” The Attorney General applied the same standard from *Matter of A-R-C-G-* requiring that [“persecution arises on account of membership in a protected group,”](#) but held that women who were victims of domestic violence no longer qualify broadly as a protected group. The particular social group [“must exist independently of the harm asserted in an application for asylum,”](#) as opposed to their inability to leave being defined or created by the harm. In *Matter of A-B-*, the respondent had claimed she was eligible for asylum because of her membership in the particular social group of [“El Salvadoran women who are unable to leave their domestic relationships where they have children in common.”](#)

The right to seek and enjoy asylum is affirmed in [Article 14\(2\) of the Universal Declaration of Human Rights](#) and the United States government has ensured that this right is given effect at the national level by [adhering to the 1951 Convention Relating to the Status of Refugees \(“1951 Convention”\)](#) by virtue of the [1967 Protocol Relating to the Status of Refugees](#) and approving [The United States Refugee Act of 1980](#) amendment to the Immigration and Nationality Act, which defines “refugees” under the same guidelines as the 1951 Convention. The United States has also used the [United Nations Office of the High Commissioner for Refugees definition](#) for “particular social group” and uses case law to decide what circumstances apply on a case-by-case

basis. However, since the United States has not ratified other international human rights treaties, like the United Nations [Convention on the Elimination of All Forms of Discrimination against Women](#), which states that “aggravated or cumulative forms of [discrimination against women may amount to persecution](#) in the sense of the 1951 Convention,” the international obligation to interpret the definition of a “refugee” in a light more favorable to women’s issues has yet to become binding.

On the other hand, the United States has ratified the [United Nations Convention Against Torture](#) (“CAT”). [Victims of domestic violence](#) or gang-related violence must establish that it is more likely than not that they would be [tortured if they were to be returned](#) to their country of removal. If they meet the threshold, then the United States is obligated to [withhold or defer removal](#) to the country from which they came. One challenge to this approach is that the government must be involved in order for CAT to apply, and while mere acquiescence might count, a person seeking asylum must demonstrate that the government chose to ignore the fact that someone else tried to torture or kill that person. Furthermore, it can be difficult to apply CAT if countries have proactively introduced measures to address domestic violence by ratifying international human rights treaties and passing domestic legislation with the aim to offer remedies to confront the issue.

The Attorney General’s decision in *Matter of A-B-* “[close\[s\] the door on domestic violence](#) and gang-based asylum claims by those fleeing persecution from ‘private actors’,” which means victims should not cite or rely on *Matter of A-R-C-G-* anymore since claims in that case will not find support in *Matter of A-B-*. While cases on gender-based asylum should still be brought forward to push for a change in practice, practitioners should [explore other forms of “particular social groups”](#) and try to rely on claims based on the other protected groups of race, religion, nationality, and political opinion. However, the United States government will likely “be forced to address the issue of [‘gender alone’-based particular social group claims.](#)” Additionally, the Attorney General’s decision stated that persecution by a nongovernmental entity met the standard for asylum [“so long as the government was ‘unable or unwilling’ to prevent such persecution.”](#) Within dicta, he seemingly heightened this burden by suggesting that asylum seekers must now demonstrate that their governments [“condoned the behavior or demonstrated a complete helplessness to protect the victim”](#) rather than just showing that the government had difficulty controlling the private actor.

Under *Matter of A-B-*, victims can no longer expect to be granted asylum by relying on domestic violence and gang-based claims as stated in *Matter of A-R-C-G-*. While it is debated whether this is in violation of international human rights law standards, the situation could improve if more international human rights treaties are ratified by the United States, incorporated into domestic law, and applied effectively. For now, victims should focus their claims on other protected groups rather than particular social groups, even while still bringing those gender-based claims forward. Ultimately, immigration judges may shift again to accepting domestic violence and gang-based asylum claims if and when the political climate changes and they choose to interpret the law in a different manner.

Outsource Human Rights Obligations

November 22, 2018
by Victoria Kadous

Nicaragua has historically been regarded as [one of the safest Central American nations](#). This is in part due to low levels of corruption and homicide coupled with the fact that unrest and violence in Nicaragua is not as pervasive as it is in other Central American countries. As a result, Nicaragua has had low migration to the United States. Of the migrants that do leave Nicaragua, most of them are seeking better paying jobs in neighboring Costa Rica. However, this overall peace within Nicaragua ceased under President Daniel Ortega.

Since April 2018, [thousands of citizens have demanded Ortega's resignation](#). In response to these outcries, Ortega dispatched police and hired para-police groups. These [para-police groups](#) are combinations of plainclothes police officers, the Sandinista Youth paramilitaries, and gang members. The use of para-police is not a new strategy. In fact several Central and South American countries have [used para-police to suppress critics](#) of the government. This [tactic of outsourcing law enforcement duties](#) to handle unrest has most notably occurred in Venezuela. In Venezuela, this tactic created a lot of problems because [lack of government oversight](#) resulted in para-police groups becoming criminal organizations rather than law enforcement personnel.

According to Human Rights Watch, the para-police groups in Nicaragua [have caused at present hundreds of deaths](#) and over a thousand injuries. Despite [calls from the Inter-American Commission on Human Rights](#) to end the repression of protesters and adopt measures to stop the violence, the Nicaraguan government has [refused to accept responsibility](#) or take action to end the bloodshed.

The killing of protestors in general is in violation of the right of life protected in Article 3 of the [Universal Declaration of Human Rights](#) (UDHR), Article 6 of the [International Covenant on Civil and Political Rights](#) (ICCPR), and Article 4 of the [American Convention on Human Rights](#) (ACHR). Moreover, Articles 18, 19, and 20 of the UDHR protect the rights of freedom of thought, opinion, expression, and assembly. Similarly, Articles 13 and 15 of the ACHR solidify the freedom of thought and right to assemble.

President Ortega has attempted to extract himself from responsibility by labeling the paramilitary groups as [foreign agitators, gangs](#), and [citizens](#) defending themselves. Even if that were true, Ortega would still have the responsibility to protect his citizens from being killed on the streets for exercising their right to protest. According to Article 1 of the ACHR, states are required to not only refrain from violating the provisions, but also to ensure that their citizens can exercise their rights under the ACHR. Moreover, Article 2 of the ICCPR, which Nicaragua is a party to, also requires states to respect and protect rights and remedy violations.

At this point—with such widespread killing of his citizens—Ortega [cannot simply disavow the human rights violations](#) as the actions of foreign agitators. Nicaragua's human rights obligations are universal; they do not depend solely on acts of commission, as human rights violations can

also be based on [acts of omission](#) such as failing to protect citizens from widespread killings. According to Article 1 of the ACHR, the government has the responsibility to ensure that the enumerated rights and freedoms are protected. By ignoring violations of rights and freedoms, the head of the state is effectively condoning those violations, eliminating the protections of the ACHR.

[Nicaragua signed and ratified the ACHR in 2006](#), consenting to all of its authority, including the competence of Article 45. [Article 45 provides](#) that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights can “examine communications in which a State Party alleges another State Party has committed a violation of a human right set forth in this Convention.” Because of this jurisdiction, a state party may bring a complaint to the Commission or the Court against Nicaragua for not respecting human rights. If the Nicaraguan government refuses to respect the rights of its citizens, it is up to the international community to utilize the human rights bodies to hold Ortega and the para-police accountable for the fundamental human rights violations.

Six Nations Unite in ICC Referral: A Historic Step Towards Justice for Venezuela's Citizens

December 5, 2018
by Lucia Canton

This past September, the leaders of Argentina, Canada, Chile, Colombia, Paraguay, and Peru made history when they came together and took the unprecedented step of requesting the International Criminal Court (ICC) to open an [investigation into Crimes Against Humanity \(CAH\) in Venezuela](#). This marked the first time in history that state parties to the ICC have referred a fellow member party to the Court. These six countries are urging the ICC to investigate CAH that were committed by the Venezuelan government since February 2014 in hopes that senior government officials will be held responsible for the widespread and extensive human rights abuses that have gone unprosecuted for years.

Over the past eight years, under both former President Hugo Chavez and current President Nicolás Maduro, Venezuela has regressed from a democratic nation to a nation that is falling victim to a growing climate of impunity, stripping its citizens of the rights they are entitled to as human beings. The current state of human rights in Venezuela is one of the worst in its region when it comes to rule of law. The nation suffers from a chilling homicide rate of approximately seventy-eight people killed per day (roughly one death per twenty minutes), an extreme scarcity of basic goods, and a violent repression of public demonstrations with government officials regularly arresting and torturing dissidents. In this vein, former UN High Commissioner for Human Rights, Zeid Raad Al Hussein, [appropriately summarized the nation's current status](#), stating that “the rule of law is virtually absent in Venezuela.” The country has been experiencing [severe food and medicine shortages, as well as, a growing environment of political oppression](#). Many opposition leaders have been subject to arrest and prosecution with unfair trials, and the government has brutally repressed peaceful protests.

[Civil society organizations and human rights defenders in Venezuela](#) have also been subjected to persecution and human rights abuses by Venezuelan senior officials. Likewise, Venezuelan citizens have been left voiceless and exposed to life-threatening conditions under these catastrophic circumstances, with several individuals—including children—falling victim to [arbitrary arrests and detentions, forced disappearances, extrajudicial killings, torture, and more](#). As a result, over [2.3 million Venezuelans](#) have fled the country for their own safety, pouring into neighboring countries at alarming rates. As a response to the violence and subsequent migration, the Venezuelan government, under Nicolás Maduro, has turned a blind eye to this crisis and has denied its [existence](#). Not only have senior officials in Venezuela [failed to act on their obligation to prevent these atrocities and protect Venezuelan citizens](#), but they have also been the masterminds behind these abuses, often involved in organizing and committing the crimes.

The six countries accusing the Venezuelan governments of CAH are not alone in their assertion; several regional and international organizations report similar [concerns](#). [Article seven of the ICC's Rome Statute defines CAH](#) as “specific crimes committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.” In May 2018, the Organization of American States (OAS) provided an [extensive report](#) depicting the presence of several different types of CAH occurring in Venezuela since 2014. The OAS report detailed different types of CAH, including: rape and other forms of sexual violence, imprisonment or severe deprivation of liberty, widespread and systematic persecution, torture, and murder. After analyzing the OAS report, [a Panel of Independent International Experts announced](#) that these atrocities, to which Venezuelan citizens have been subjected since February of 2014, do in fact constitute CAH under the Rome Statute. In addition to the OAS report, the UN Office of the High Commissioner for Human Rights (OHCHR) released a [report](#) finding that between July 2015 and March 2017, security forces in Venezuela killed 505 people, including twenty-four children. In November 2017, Human Rights Watch also reported systematic abuses by Venezuelan security officers. Even with plenty of evidence, and extensive research available on the existence of these crimes, the [Venezuelan government continues to adamantly deny the presence of these atrocities](#).

The [ICC jurisdiction *ratione materiae*](#) extends to four international crimes: genocide, war crimes, crimes against humanity, and the crime of aggression. The ICC has the ability to exercise jurisdiction over CAH [under three specific circumstances](#): (1) when a State Party to the ICC refers the crimes to the Court; (2) when the UN Security Council refers the crimes to the Court; or (3) when the ICC prosecutor initiates a preliminary examination into the crimes. In 2000, Venezuela ratified the Rome Statute of the ICC, giving the Court jurisdiction over the crimes perpetrated in the territory and/or by the nationals of the country. Along with Venezuela, the referring countries, as State parties to the ICC, are able to bring this referral. Although a state party referral is considered a jurisdictional trigger for the ICC, the Court has never previously opened a case brought by one government against another, having only dealt with [self-referrals](#) by states in the past. Furthermore, five of the countries behind the referral are Venezuela's neighbors, and [leaders in the Latin American region have generally avoided criticizing one another publicly](#). Consequently, this is not solely a historical step for the ICC but a monumental [regional rebuke](#) of President Nicolás Maduro.

The six countries behind the referral to the ICC are [requesting ICC's top prosecutor](#), Fatou Bensouda, to pursue an investigation of Venezuelan senior officials' involvement in CAH since February 2014. Before this referral, Ms. Bensouda announced in February 2018 that the ICC was launching a “[preliminary examination](#)” into allegations of large-scale human rights violations in the context of demonstrations and related political unrest occurring in Venezuela, since April 2017. The goal of a preliminary examination by an ICC prosecutor is to determine whether the Court should proceed with a full investigation, which can open the door to criminal charges. However, the recent State referral will not result in an additional, separate preliminary examination but will likely provide an additional basis for Ms. Bensouda's current ongoing review and analysis. The referral will also help expedite the process of opening a full investigation. Normally, authorization from the Pre-Trial Chamber of the Court is required before beginning a full investigation; however, this is [no longer required when dealing with cases by State party referrals](#), such as this one. Nevertheless, a full investigation is by no means

guaranteed; it is ultimately dependent on Ms. Bensouda's evaluation and conclusion following the preliminary examination. Customarily, ICC investigations also tend to last years, making it highly unlikely that charges will be filed any time soon.

Although the results of the preliminary examination will not be announced for a while, this timeline should not cloud the importance of the referral, and its groundbreaking impact on both a regional and international scale. First, this unprecedented step has made headlines across the world, bringing attention to the gravity of the human rights crisis in Venezuela and the Venezuelan government's role in committing CAH domestically. Second, this referral will likely encourage other countries to make state referrals to the ICC in the future and has already resulted in [other countries condemning the acts occurring against Venezuelan citizens](#). Third, the referral will help galvanize other neighboring countries who seek to isolate President Maduro's increasingly authoritarian government. Fourth, these six countries have given The Hague-based tribunal a renewed sense of urgency to investigate these crimes, while sending a clear message to the international community that the leaders of Argentina, Canada, Chile, Colombia, Paraguay, and Peru will no longer act complacent as this crisis continues to unfold. Lastly and most importantly, the referral has instilled much-needed hope within the victims of these atrocities, who have waited far too long for neighboring countries to address and act on these urgent issues. Luis Almagro, the secretary general of the OAS, [said it best](#): "The leaders of these six countries have taken a historic step today, unprecedented in the history of the Americas, creating a crucial milestone in the interests of justice, accountability, non-repetition and reparation to the victims of the Venezuelan dictatorship."

Migrants Become Vulnerable to Sex Trafficking as the Venezuelan Crisis Continues

December 9, 2018
by Marcela Velarde

Human trafficking is rising as more and more migrant women flee the political and economic crises in Venezuela, becoming [vulnerable to sexual slavery](#). With a severely depleted job market, migrants are often [lured by false promises](#) of paid work and security and taken to countries like Colombia, where their smugglers may physically restrain them. In these largely invisible situations, migrants [are forced to work long hours](#) with little to no pay, are indebted to their smugglers who helped them escape Venezuela, and are exposed to physical and psychological violence. Additionally, the smugglers deter these women from escaping by [threatening to kill their families](#).

Around 4,500 Venezuelan sex workers are in Colombia; however, as sex work is legal in Colombia, it is often difficult to determine [who entered sex work voluntarily and who was coerced](#). The [Colombian Constitutional Court \(CCC\) recognized](#) that sex workers are vulnerable and deserve protection without discrimination because they have the same rights as people in other industries. However, Venezuelan migrants, with no work authorization or proper documentation, do not receive these protections and are [easy targets for criminal organizations](#) taking advantage of the conditions in Venezuela. As of July 2018, the United Nations estimates that [2.3 million Venezuelans have migrated](#), with Colombia being the main recipient, which helps these illegal practices flourish. The political and economic crises in Venezuela have resulted in a dire refugee situation where [migrants who feel powerless](#) are forced into sex work to [provide for their loved ones](#).

Since 2004, the United States has repeatedly found [Venezuela noncompliant](#) with U.S. standards for combatting human trafficking and maintaining victim protection and prevention efforts. According to the U.S. Department of State's 2018 Trafficking in Persons Report, Venezuela [has not fully met the minimum standards](#) in its efforts to eliminate human trafficking. Although Venezuela has criminalized all forms of trafficking in women and girls, the government has not prosecuted traffickers or identified trafficking victims. As a result of Venezuela's deteriorating economic situation with no anti-trafficking plan imposed by the government, the report affirms many people from Venezuela have been forced to flee to neighboring countries. While the report stated that Colombia fully meets the minimum standards for eliminating human trafficking, it also noted that at least 600,000 Venezuelans migrated to Colombia since February 2018. Additionally, [Bogota's Women's Secretary interviewed](#) sex workers in Colombia and reported that thirty-five percent of people involved were from Venezuela and seventeen percent were forced into working in the industry. [Colombia has struggled to identify and provide services](#) to potential trafficking victims due to the cost and lack of resources to handle the rapid influx of migrants. Given the migrants' vulnerable situation, sex trafficking is probably underreported.

Both Venezuela and Colombia have international legal obligations they should enforce domestically to address human trafficking. Both have [ratified](#) the [Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children](#) enacted on November 15, 2000, which supplements the [United Nations Convention against Transnational Organized Crime](#). [State parties are obligated to adopt legislation](#) that criminalizes trafficking in persons as defined by the Protocol and should provide assistance to protect victims of trafficking through identifying victims, enabling their concerns to be presented, and implementing measures to provide for physical and psychological recovery. Additionally, even though [Venezuela denounced](#) the [American Convention on Human Rights](#) in 2012, Colombia is still a state party with the legal obligation to prohibit all forms of slavery and trafficking in women, including forced labor that adversely affects the dignity and physical capacity of a person.

Moreover, both countries are [parties](#) to the [International Covenant on Civil and Political Rights](#) and the [International Covenant on Economic, Social and Cultural Rights](#), which state similar rights. The [three main legal obligations](#) arising from these international human rights treaties are to criminalize trafficking in persons in domestic legislation; prevent, investigate, and prosecute criminals; and protect victims of trafficking, which both countries have struggled with according to the Trafficking in Persons Report. Additionally, the CCC ruled that [Venezuelan sex workers are entitled to work visas](#) by considering the reasons they decide to migrate to Colombia and the circumstances they may face if returned to Venezuela. As a result, Colombia should [implement a legal framework](#) that protects sex workers along with regulation to verify that they are [not subjected to exploitative conditions](#), thus distinguishing human trafficking victims.

The political and economic crises in Venezuela are one of the main reasons Venezuelan migrants have fled to neighboring countries where they have been deceived by [misleading work opportunities](#), exposing migrants to sexual slavery. Venezuela needs to [work with the surrounding governments](#), including Colombia, by implementing international human rights treaties, prosecuting these criminal organizations at a local and international level, and encouraging law enforcement to follow the appropriate protocol when responding to human trafficking cases. Unfortunately, this largely invisible problem is [disproportionately impacting women](#), targeting migrants and those vulnerable to sexual and gender based violence. Ultimately, the political and economic crises in Venezuela have to be resolved and more gender-focused legislation should be implemented for Venezuela to address and eliminate the conditions that lead to devastating exploitation of women.

Chile and Bolivia: An Analysis of the ICJ Decision

December 10, 2018
by Shelsea Ramirez

On October 1, 2018, the International Court of Justice (ICJ) delivered its [judgment](#) in Bolivia's case against Chile, [rejecting Bolivia's arguments](#) that Chile had an obligation to negotiate sovereign access to the Pacific Ocean for Bolivia. Bolivia, a landlocked state with limited access to the sea neighboring Chile, sought to obligate Chile to negotiate on their terms.

The case stemmed from the consequences of the [War of the Pacific](#) between Bolivia and Peru against Chile, which rendered Bolivia landlocked. A [1904 Peace Treaty](#) between Chile and Bolivia sealed the territorial status quo. The ICJ held that after the 1904 Peace Treaty, Chile never accepted any legal obligation to negotiate a sovereign access to the ocean. [Chile currently allows Bolivia duty-free access](#) to the port of Arica, but Bolivia sought to have a passage, including a train line and port, under its own control. According to the World Bank, landlocked states are the [most economically vulnerable](#). Oftentimes, their communities are developmentally hindered. It affects most aspects of the community, including security, economy, and foreign policy. The Bolivian government argued that restoring sovereign access to the sea would revolutionize the economy, which currently has the [second lowest per capita GDP](#) in South America. Bolivian officials have previously stated that the country's annual GDP growth would be twenty percent higher if it still had a route to international waters.

As a result of the ICJ's ruling, Bolivia cannot hold Chile to any obligation or impose any negotiations that would question the territorial integrity of Chile. The ICJ's ruling recognized the [history of dialogue](#), exchanges, and negotiations between the two states as well as the attempts to resolve the landlocked situation of Bolivia following the War of the Pacific and the 1904 Peace Treaty. However, the ICJ did not see this history as binding on Chile and therefore reinforced the [United Nations Convention on the Law of the Sea](#) (UNCLOS) protection of transit states. Although only noted once in the ICJ's judgement, Article 125 of UNCLOS is of particular importance because it directly discusses the rights of landlocked states, like Bolivia, and transit states, like Chile.

Both states demonstrably recognize the importance of Paragraph One of Article 125, which states that landlocked states have the right to access the sea through the territory of transit states to exercise the rights outlined in UNCLOS. Paragraph Two states that the transit state and the landlocked state shall agree upon the terms of access to the sea through "bilateral, subregional, or regional agreements." The ICJ notes Bolivia's belief that the 1984 declaration made upon signature of the UNCLOS that mentioned negotiations to restore sovereign access to the sea required a response from Chile. Bolivia believed that Chile's subsequent silence on the declaration and their engagement in negotiations with Bolivia solidified Chile's obligation to negotiate sovereign access. This obligation would emphasize Paragraph Two because it would reserve more rights for landlocked states than transit states.

Paragraph Three of Article 125 asserts that transit states have the right to ensure that the landlocked states do not infringe on the sovereignty of their territories. Chile contends that there is no obligation to negotiate and Bolivia failed to prove that one was created by acquiescence. Silence on a declaration made on the signing of UNCLOS does not create a legal obligation. The ICJ stated, “acquiescence is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent” and no such conduct occurred to create a legal obligation on Chile.

Bolivia’s attempt to impose on the sovereignty of Chile, a transit state, violated Article 125. Chile and Bolivia have an established agreement that allows Bolivia the right of access to and from the sea as well as its freedom to exercise the rights stated in UNCLOS, but Bolivia sought more. Had the ICJ ruled in Bolivia’s favor, it would have created a precedent that would allow landlocked states to put their needs before the sovereignty and rights of the transit states they would impede upon. On the other hand, Bolivia continues to have difficulties as a landlocked state that could have been eased had the judgment been in its favor. The ICJ decision reinforces the economic vulnerability that Bolivia faces as a landlocked state. The most obvious handicap is the reliance on transit states to implement treaties that gives Bolivia, and similar landlocked states, access to ports to develop their trade. The Economist reports that companies often [consider landlocked nations unreliable trading partners](#) because their trade can be interrupted by transit states. For example, in 2013, Chilean customs officials went on strike and negatively affected the Bolivian companies who were trying to pass through customs to access the ports. It is estimated that the Bolivian GDP would be one-fifth higher if they had continuous access to the sea.

Nevertheless, the ICJ encouraged both Chile and Bolivia to continue their dialogues and exchanges as had been done in the past. The Court encouraged “[good neighbourliness](#)” and recognized that it was in both their interests to undertake willing and meaningful negotiations. The case will likely hold a significant impact on the negotiations between transit states and landlocked states in the future. Transit states will emphasize their sovereignty and note that there is no legal obligation to give access to the sea particularly if it puts the transit state at risk. The case also hinders the economies of developing landlocked states who rely on their access to the sea to improve their economy.